

Remarks/Arguments

In the Office Action dated December 31, 2007, it is noted that claims 1-9 and 13-21 are pending; that claims 1-9 and 13-21 **presumably** stand rejected under 35 U.S.C. §103(a); that the drawings filed on May 6, 2005 have been accepted; and that the response filed on October 15, 2007 was considered and was persuasive in causing the rejection of the claims to be withdrawn.

By this response, the reference designators have been removed from the claims. It should be noted that, in the prior response, claim 7 was amended from the original form without showing the text being deleted. The present amendment to claim 7 shows claim 7, as originally filed, with the appropriate deleted text “10” is shown in strikethrough. The present amendment to claim 7 is believed to be proper and justified.

Claims 25-27 have been added. These claims correspond to claims 10-12, which were inadvertently deleted. No new matter has been added.

Clarification of References Cited

In the present Office Action, five references are cited but not applied. *See page 6 of the Office Action.* It is said that these references, “show the state of the art with respect to **clips and bookmarks** in general.” [Emphasis supplied].

It is respectfully submitted that this explanation about the showings in these references is in error and it is believed that the explanation should be corrected. After a review by Applicants’ representative, it appears that all the references deal with wireless local area networks and the control thereof. Many references appear to deal with bandwidth control features of these networks. It should also be noted that the Publication No. listed on page 6 of the Office Action for the Solomon reference appears to have an inadvertent transposition of the numbers 2 and 0 following the slash.

Clarification of the Rejection in the Present Office Action

Although the statement of rejection appears to be based on 35 U.S.C. §102, the actual statutory basis will be assumed to be 35 U.S.C. §103.

The present Office Action shows, on page 2, that the claims are being rejected under 35 U.S.C. §103 in the heading. But, on that same page in the statement of the rejection, it is stated that the rejection is made under 35 U.S.C. §102(a). The latter is the same statutory basis

using the same reference employed in the prior Office Action. Since it was stated in the present Office Action, that the prior arguments submitted on October 15, 2007 were persuasive in overcoming the rejection and that the prior rejection was withdrawn, it can only be concluded that the statutory basis of rejection in the present Office Action at the bottom of page 2 is cited in error. Therefore, in view of this discrepancy in the present Office Action, it will be assumed that the present rejection is made on the statutory basis of 35 U.S.C. §103 rather than 35 U.S.C. §102. However, applicants respectfully submit that a final Office Action cannot follow the present action due to the uncertainty in the present action.

Cited Art

The following reference has been cited and applied against the claims: U.S. Patent Application Publication No. 2003/0081547 to Ho (hereinafter referenced as “*Ho*”).

Rejection of Claims 1-9 and 13-21 under 35 U.S.C. §103

Claims 1-9 and 13-21 stand rejected under 35 U.S.C. §103 as being unpatentable over Ho. This rejection is respectfully traversed.

Claim 1 defines a hybrid controller (HC) and calls, in part, for:

“...responsive to a schedule change for one of the participating WSTAs, 106, 109 the SME 202 within the HC generates a request primitive for transmission to the MLME 201 within the HC.”

Claim 7 also defines a hybrid controller (HC) and calls, in part, for:

“...responsive to a request primitive relating to a schedule change for one of the participating WSTAs, 106, 109, the MLME 201 within the HC determines a result for the request primitive and generates a confirm primitive for transmission to the SME 202 within the HC.”

Claims 13 and 19 are method claims including limitations substantially similar to those listed above for claims 1 and 7, respectively. For the sake of brevity and because of the similarity between the limitations in claims 1 (13) and 7 (19), the remarks below will be limited to claim 1. These remarks will be understood to apply with equal weight to the remaining independent claims.

Ho appears to introduce the concept of traffic streams and the need to add, delete, and modify the streams with the support of QoS primitives. In paragraphs [0091]-[0092], Ho even mentions that the HC schedules transmission times. But at no time does Ho even remotely

suggest that scheduling changes are to be effected by primitives requesting the schedule change. Instead, Ho simply offers that the HC adds, deletes, and modifies traffic streams to schedule the appropriate transmission times.

Even though Ho appears to see a need to schedule transmission times, Ho lacks any teaching or appreciation of the need for “*a request primitive relating to a schedule change for one of the participating WSTAs*”, as defined by Applicants. Moreover, Ho lacks any teaching that “*the MLME 201 within the HC determines a result for the request primitive*” relating to the schedule change and that the MLME then “*generates a confirm primitive for transmission to the SME 202 within the HC.*” Ho instead appears to propose that the scheduling of transmission times be handled by adding, deleting, and modifying the traffic streams at the HC. There are no request primitives relating to a schedule change proposed anywhere in Ho.

It is apparent that there is agreement with this position in the present Office Action since the present Office Action moves outside the Ho reference for support of the rejection and resorts to Official Notice in order to find support for rejecting these limitations. The Official Notice in the present Office Action is unsupported by documentary evidence. According to MPEP 2144.03(A), “Official notice unsupported by documentary evidence should only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well-known.” Applicants respectfully submit that the Official Notice is made in error because the facts relied upon are not well-known and are not capable of instant and unquestionable demonstration as being well-known. Applicants hereby traverse the taking of Official Notice and request that the Official Notice in this matter be supported by documentary evidence. Without the proffer of such documentary evidence, it is submitted that the present Office Action fails to state a *prima facie* case of obviousness under 35 U.S.C. §103.

As further evidence that the facts asserted to be well-known in the Official Notice are, in fact, not well-known, attention should be directed to the IEEE Standards document cited by Ho and by Applicants. Ho cites IEEE 802.11e/D2.0a from November 2001, the month that Ho filed his provisional patent application. *See Ho at paragraph [0030]*. Applicants cite a subsequent version of the standard document, namely, IEEE 802.11e Draft 3.3 including modifications introduced in a document specified in IEEE 802.11-02/650r0 (November 2002). *See Applicants’ specification at page 4, paragraph [0017]*. The claim limitations cited above were not present in any standards documents available to Ho or Applicants at the time Applicants’ invention was

made. A problem with these standards was seen by Applicants and addressed by the invention claimed above by Applicants. The limitations cited above, for which the Office Action takes Official Notice, could not have been well-known at the time of Applicants' invention because they were not even remotely suggested in the standards documents incorporated into Ho and into Applicants' specification.

In light of the remarks above, it is believed that Ho fails to teach all the elements in Applicants' claims. In view of these remarks and in light of the substantial similarity between the limitations in independent claims 1 (13) and 7 (19), it is believed that the elements of claims 1, 7, 13, and 19 and the claims dependent thereon would not have been anticipated by, or obvious to, a person of ordinary skill in the art upon a reading of Ho. Therefore, it is submitted that claims 1-9 and 13-21 are allowable under both 35 U.S.C. §102 and 35 U.S.C. §103. Withdrawal of this rejection is respectfully requested.

Conclusion

In view of the foregoing, it is respectfully submitted that all the claims pending in this patent application are in condition for allowance. Reconsideration and allowance of all the claims are respectfully solicited.

If, however, the Examiner believes that there are any unresolved issues requiring adverse final action in any of the claims now pending in the application, it is requested that the Examiner contact the Applicants' attorney at (914) 333-9602, so that a mutually convenient date and time for a telephonic interview may be scheduled for resolving such issues as expeditiously as possible.

Amendment
Serial No. 10/534,418

In the event there are any errors with respect to the fees for this response or any other papers related to this response, the Director is hereby given permission to charge any shortages and credit any overcharges of any fees required for this submission to Deposit Account No. 14-1270.

Respectfully submitted,

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